

## RESEARCH APPENDIX

Date Transfer Requested: 11/30/2018 (Per: CMH)

Part  
2 of 2

Appendix D ... has been added to the 2017 LRB-6074

Appendix A ☞ LRB 17-5979

Appendix B ☞ LRB 17-5982

Appendix C ☞ LRB 17-5983

Appendix D ☞ LRB 17-5985

Appendix E ☞ LRB 17-5986

Appendix F ☞ LRB 17-5989

Appendix G ☞ LRB 17-5990

Appendix H ☞ LRB 17-5995

Appendix I ☞ LRB 17-5998

Appendix J ☞ LRB 17-6001

Appendix K ☞ LRB 17-6004

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Appendix M ☞ LRB 17-6007

Appendix N ☞ LRB 17-6012

Appendix O ☞ LRB 17-6015

Appendix P ☞ LRB 17-6017

Appendix Q ☞ LRB 17-6019

Appendix R ☞ LRB 17-6021

Appendix S ☞ LRB 17-6023

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Appendix U ☞ LRB 17-6025

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Appendix AA ☞ LRB 17-6038

Appendix BB ☞ LRB 17-6039

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Appendix DD ☞ LRB 17-6041

Appendix EE ☞ LRB 17-6042

Appendix FF ☞ LRB 17-6043

Appendix GG ☞ LRB 17-6046

Appendix HH ☞ LRB 17-6047

Appendix II ☞ LRB 17-6048

Appendix JJ ☞ LRB 17-6049

Appendix KK ☞ LRB 17-6050

Appendix LL ☞ LRB 17-6051

Appendix MM ☞ LRB 17-6052

Appendix NN ☞ LRB 17-6058

Appendix OO ☞ LRB 17-6059

Appendix PP ☞ LRB 17-6065

Appendix QQ ☞ LRB 17-6067



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5985/P4

EKL:wj/km/cs

PS  
9/1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN: 11/29

DUE: 11/29

1 AN ACT *to amend* 71.05 (6) (a) 14., 71.07 (7) (b), 71.36 (1) and 71.365 (1); and *to*  
2 *create* 71.05 (10) (dm), 71.21 (6), 71.365 (4m) and 71.775 (3) (a) 4. of the  
3 statutes; **relating to:** election of pass-through entities to be taxed at the entity  
4 level and requiring the exercise of rule-making authority.

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***Analysis by the Legislative Reference Bureau***

This bill allows pass-through entities to elect to be taxed at the entity level for purposes of the state's income and franchise taxes.

Under current law, pass-through entities, such as tax-option corporations and partnerships, are generally not subject to the income or franchise tax at the entity level. Rather, any item of income, loss, or deduction flows through to their shareholders, partners, or members, who are then subject to tax. The bill allows tax- option corporations and partnerships, including limited liability companies and other entities that are treated as partnerships under federal tax law, to elect to be taxed at the entity level for purposes of the income and franchise taxes. Persons who hold more than 50 percent ownership of the pass-through entity must consent to the election and must consent to any revocation of the election. The bill allows the election to be made for taxable years beginning in 2018 for tax-option corporations and 2019 for other entities.

INS-A

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       **SECTION 1.** 71.05 (6) (a) 14. of the statutes is amended to read:

2       71.05 (6) (a) 14. Any amount received as a proportionate share of the earnings  
3       and profits of a corporation that is an S corporation for federal income tax purposes  
4       if those earnings and profits accumulated during a year for which the shareholders  
5       have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent  
6       not included in federal adjusted gross income for the current year. This subdivision  
7       does not apply to earnings and profits accumulated during a year for which the  
8       shareholders have elected under s. 71.365 (4m) (a) to be taxed at the entity level.

9       **SECTION 2.** 71.05 (10) (dm) of the statutes is created to read:

*a tax-option corporation  
has made an election*

10       71.05 (10) (dm) Any item of income, loss, or deduction passed through from an  
11       entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a).

12       **SECTION 3.** 71.07 (7) (b) of the statutes is amended to read:

*To pay tax at the  
entity level*

13       71.07 (7) (b) 1. Subject to conditions and limitations in pars. (c) and (d), if a  
14       resident individual, estate or trust pays a net income tax to another state, that  
15       resident individual, estate or trust may credit the net tax paid to that other state on  
16       that income against the net income tax otherwise payable to the state on income of  
17       the same year. The credit may not be allowed unless the income taxed by the other  
18       state is also considered income for Wisconsin tax purposes. The credit may not be  
19       allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does  
20       not apply to those credits. For purposes of this paragraph, amounts declared and  
21       paid under the income tax law of another state are considered a net income tax paid

1 to that other state only in the year in which the income tax return for that state was  
2 required to be filed.

3 2. Income and franchise taxes paid to another state by a tax-option corporation,  
4 partnership, or limited liability company that is treated as a partnership may be  
5 claimed as a credit under ~~this paragraph subd. 1.~~ by that corporation's shareholders,  
6 that partnership's partners, or that limited liability company's members who are  
7 residents of this state and who otherwise qualify under this paragraph. This  
8 subdivision does not apply to an entity that has made an election under s. 71.21 (6)  
9 (a) or 71.365 (4m) (a).

10 *INS 3-10* → SECTION 4. 71.21 (6) of the statutes is created to read:

11 71.21 (6) (a) If persons who, on the day on which an election is made, hold more  
12 than 50 percent of the capital and profits of a partnership consent, a partnership that  
13 is a partnership for federal income tax purposes may elect, on or before the due date  
14 or extended due date of its return under this chapter, to be taxed at the entity level  
15 as if it were a tax-option corporation electing under s. 71.365 (4m) (a). *under this paragraph*

16 *INS 3-16* → (c) (b) If persons who, on the day on which the election under this paragraph is  
17 made, hold more than 50 percent of the capital and profits of a partnership consent,  
18 a partnership that is a partnership for federal income tax purposes may elect, on or  
19 before the due date or extended due date of its return under this chapter, to revoke  
20 for that taxable year its election under par. (a). *that has elected to be taxed at the entity level under par. (a)*

21 *INS 3-21* → (e) (c) The department ~~shall~~ *may* promulgate rules to implement this subsection.

22 SECTION 5. 71.36 (1) of the statutes is amended to read:

23 71.36 (1) It is the intent of this section that shareholders of tax-option  
24 corporations include in their Wisconsin adjusted gross income their proportionate  
25 share of the corporation's tax-option items unless the corporation elects under s.

*at a rate of 7.9 percent of net income reportable to this state as described in par. (d) 1. for that taxable year*

## SECTION 5

1 71.365 (4) (a) not to be a tax-option corporation <sup>elects</sup> or under s. 71.365 (4m) <sup>(a)</sup> to pay tax <sup>be taxed</sup>  
2 at the entity level.

3 SECTION 6. 71.365 (1) of the statutes is amended to read:

4 71.365 (1) ADJUSTED BASIS OF SHAREHOLDERS' STOCK IN TAX-OPTION CORPORATION.  
5 For purposes of this chapter, the adjusted basis of a shareholder in the stock and  
6 indebtedness of a tax-option corporation shall be determined in the manner  
7 prescribed by the internal revenue code for a shareholder of an S corporation, except  
8 that the nature and amount of items affecting that basis shall be determined under  
9 this chapter. This subsection applies to taxable years of corporations for which an  
10 election has been made under sub. (4m) (a). This subsection does not apply to 1978  
11 and earlier taxable years of corporations which were S corporations for federal  
12 income tax purposes or to taxable years of corporations for which an election has been  
13 made under sub. (4) (a).

14 SECTION 7. 71.365 (4m) of the statutes is created to read:

15 71.365 (4m) <sup>TAX-OPTION CORPORATION</sup> ELECTION TO PAY TAX AT THE ENTITY LEVEL. (a) If persons who hold <sup>FRANCHISE OR INCOME</sup>

16 more than 50 percent of the shares on the day on which an election is made consent, <sup>under this paragraph</sup>  
17 a corporation that is an S corporation for federal income tax purposes may elect, on

18 or before the due date or extended due date of its return under this chapter, to pay

19 tax without taking into account the deductions from net income under s. 71.36 (1m)

20 (a) of amounts that would otherwise be included in the Wisconsin adjusted gross  
21 income of its shareholders and the capital gains deduction under s. 71.05 (6) (b) 9.

22 for that taxable year <sup>and for later taxable years until its status is again changed</sup>

23 (b) If persons who, on the day on which the election under this paragraph is  
24 made, hold more than 50 percent of the shares of a corporation that has elected to  
25 be taxed at the entity level under par. (a) consent, a corporation that is an S

1 corporation for federal income tax purposes may elect, on or before the due date or  
2 extended due date of its return under this chapter, to revoke for that taxable year its  
3 election under par. (a).

INS 5-4 →

4 (c) The department ~~shall~~ <sup>may</sup> promulgate rules to implement this subsection.

5 (e) **SECTION 8.** 71.775 (3) (a) 4. of the statutes is created to read:

6 71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or  
7 71.365 (4m) (a) to be taxed at the entity level.

8 **SECTION 9. Initial applicability.**

9 (1) This act first applies to taxable years beginning on January 1, 2019, except  
10 that this act first applies to taxable years beginning on January 1, 2018, for  
11 tax-option corporations.

12 (END)

2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-5985/P4ins  
EKL:wj/km/cs

1       <sup>✓</sup>INS-A

2       An entity that makes the election is taxed at a rate of 7.9 percent on its net  
3       income that is reportable to Wisconsin, and the situs of income is determined as if  
4       the election was not made. The entity may not claim losses and tax credits except  
5       for the credit for taxes paid to other states. The bill also provides that the adjusted  
6       basis of the entity's partners, shareholders, or members is determined as if the  
7       election was not made. If the entity fails to pay the taxes due, the department of  
8       revenue may collect the amount from the entity's partners, shareholders, or  
9       members.

10       INS 3-10

11       ~~SECTION 1.~~ 71.07 (7) (b) of the statutes is renumbered 71.07 (7) (b) 1. and 2. and  
12       amended to read: <sup>plain</sup>

13       71.07 (7) (b) <sup>1.</sup> Subject to conditions and limitations in pars. (c) and (d), if a  
14       resident individual, estate or trust pays a net income tax to another state, that  
15       resident individual, estate or trust may credit the net tax paid to that other state on  
16       that income against the net income tax otherwise payable to the this state on income  
17       of the same year. The credit may not be allowed unless the income taxed by the other  
18       state is also considered income for Wisconsin tax purposes. The credit may not be  
19       allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does  
20       not apply to those credits. For purposes of this ~~paragraph~~ <sup>✓</sup>subdivision, amounts  
21       declared and paid under the income tax law of another state are considered a net  
22       income tax paid to that other state only in the year in which the income tax return  
23       for that state was required to be filed.

^ as affected by 2017 WIS Act 59, <sup>2</sup>

2. Income and franchise taxes paid to another state by a tax-option corporation, partnership, or limited liability company that is treated as a partnership may be claimed as a credit under this paragraph by that corporation's shareholders, that partnership's partners, or that limited liability company's members who are residents of this state and who otherwise qualify under this paragraph, unless the tax-option corporation, partnership, or limited liability company has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a).

Cross-reference: See also ch. HS 3, Wis. adm. code.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135, 183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11, 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401; 2011 a. 15, 32, 67, 212, 213, 232, 237; 2011 a. 260 s. 80; 2013 a. 20, 54, 62, 116, 145; 2013 a. 166 s. 77; 2015 a. 55, 186; 2015 a. 197 s. 51; 2015 a. 237, 312; 2017 a. 58, 59, 176, 197; 2017 a. 364 ss. 11 to 13, 48; 2017 a. 365 s. 111; 2017 a. 366; s. 13.92 (1) (bm) 2.; s. 35.17 correction in (9r) (j).

SECTION 2. 71.07 (7) (b) 3. of the statutes is created to read:

71.07 (7) (b) 3. Subject to the conditions and limitations in pars. (c) and (d), if a tax-option corporation, partnership, or limited liability company makes an election under s. 71.21 (6) (a) or 71.365 (4m) (a), that tax-option corporation, partnership, or limited liability company may credit the net income or franchise tax paid by the entity to another state on that income and the net income tax on that income paid by the entity on behalf of its shareholders, partners, and members that are residents of this state on a composite return filed with the other state against the net income or franchise tax otherwise payable to this state on income of the same year. The credit may not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes and is otherwise attributable to amounts that would be reportable to this state by shareholders, partners, or members of the tax-option corporation, partnership, or limited liability company that are residents of this state if the election under s. 71.21 (6) (a) or 71.365 (4m) (a) was not made. The credit may not be allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes



of this subdivision, amounts declared and paid under the income tax law of another state are considered a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed.

SECTION 3. 71.07 (7) (c) of the statutes is amended to read:

(5) 71.07 (7) (c) The credit total credits under par. (b) 1. and 2. may not exceed an amount determined by multiplying the taxpayer's net Wisconsin income tax by a ratio derived by dividing the income subject to tax in the other state that is also subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the taxpayer's Wisconsin adjusted gross income. The credit under par. (b) 3. may not exceed an amount determined by multiplying the income subject to tax in the other state that is also subject to tax in Wisconsin by 7.9 percent.

Cross-reference: See also ch. HS 3, Wis. adm. code.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135, 183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11, 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401; 2011 a. 15, 32, 67, 212, 213, 232, 237; 2011 a. 260 s. 80; 2013 a. 20, 54, 62, 116, 145; 2013 a. 166 s. 77; 2015 a. 55, 186; 2015 a. 197 s. 51; 2015 a. 237, 312; 2017 a. 58, 59, 176, 197; 2017 a. 364 ss. 11 to 13, 48; 2017 a. 365 s. 111; 2017 a. 366; s. 13.92 (1) (bm) 2.; s. 35.17 correction in (9) (j).

INS 3-16

(b) It is the intent of the election under par. (a) that partners of a partnership may not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the partnership. It is also the intent that the partnership shall pay tax on items that would otherwise be taxed if this election was not made.

INS 3-21

(d) If an election is made under par. (a), then all of the following shall apply:

1. The net income of the partnership is computed under s. 71.21 (1) to (5) and the situs of income shall be determined as if the election under par. (a) was not made.
2. The partnership may not claim the loss under s. 71.05 (8).

1           3. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter  
2 may not be claimed by the partnership.

3           4. A partner's adjusted basis of the partner's interest in the partnership is  
4 determined as if the election under par. (a) was not made.

5           5. The provisions of ss. 71.09 and 71.84 relating to estimated payments and  
6 underpayment interest shall apply to the partnership.

7           6. If the partnership fails to pay the amount owed to the department with  
8 respect to income as a result of the election under par. (a), the department may collect  
9 the amount from the partners based on their proportionate share of such income.

10           INS 4-13

11           ~~§~~ **SECTION 4.** 71.365 (1) of the statutes is renumbered 71.365 (1) (a) and amended  
12 to read:

13           71.365 (1) (a) For purposes of this chapter, the adjusted basis of a shareholder  
14 in the stock and indebtedness of a tax-option corporation shall be determined in the  
15 manner prescribed by the internal revenue code for a shareholder of an S  
16 corporation, except that the nature and amount of items affecting that basis shall be  
17 determined under this chapter. This subsection paragraph does not apply to 1978  
18 and earlier taxable years of corporations which were S corporations for federal  
19 income tax purposes or to taxable years of corporations for which an election has been  
20 made under sub. (4) (a).

History: 1987 a. 312; 1987 a. 411 ss. 40, 50, 147; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2005 a. 362; 2009 a. 28; 2013 a. 20.

Cross-reference: See also s. Tax 2.03, Wis. adm. code.

21           **SECTION 5.** 71.365 (1) (b) of the statutes is created to read:

1           71.365 (1) (b) The adjusted basis of a shareholder in the stock and indebtedness  
2 of a tax-option corporation that has made an election under <sup>Sub.</sup> s. 71.365 (4m) (a) is  
3 determined as if the election was not made.

4           INS 4-19 ✓

5           at the entity level at a rate of 7.9 percent of net income reportable to this state  
6 as described in par. (d) 1. ✓

7           INS 4-23 ✓

8           (b) It is the intent of the election under par. (a) that shareholders of a tax-option  
9 corporation may not include in their Wisconsin adjusted gross income their  
10 proportionate share of all items of income, gain, loss, or deduction of the tax-option  
11 corporation. It is also the intent that the tax-option corporation shall pay tax on  
12 items that would otherwise be taxed if this election was not made.

13          INS 5-4.

14          (d) If an election is made under par. (a), <sup>then</sup> all of the following shall apply: ✓

15           1. The net income of the tax-option corporation is computed under s. 71.34 (1k)  
16 and the situs of income shall be determined as if the election was not made.

17           2. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter ✓  
18 may not be claimed by the tax-option corporation.

19           3. The tax-option corporation may not claim losses under ss. 71.05 (8) and  
20 71.26 (4). ✓

21           4. The provisions of ss. 71.29 and 71.84 relating to estimated payments and ✓  
22 underpayment interest shall apply to the tax-option corporation for the taxable year  
23 beginning in 2019 and later years.

24           5. If the tax-option corporation fails to pay the amount owed to the department  
25 with respect to income as a result of the election under par. (a), the department may ✓

- 1 collect such amount from the shareholders based on their proportionate share of such
- 2 income.



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5985/PF

EKL:all

P6

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to renumber and amend* 71.07 (7) (b) and 71.365 (1); *to amend* 71.05  
2             (6) (a) 14., 71.07 (7) (c) and 71.36 (1); and *to create* 71.05 (10) (dm), 71.07 (7)  
3             (b) 3., 71.21 (6), 71.365 (1) (b), 71.365 (4m) and 71.775 (3) (a) 4. of the statutes;  
4             **relating to:** election of pass-through entities to be taxed at the entity level.

---

***Analysis by the Legislative Reference Bureau***

This bill allows pass-through entities to elect to be taxed at the entity level for purposes of the state's income and franchise taxes.

Under current law, pass-through entities, such as tax-option corporations and partnerships, are generally not subject to the income or franchise tax at the entity level. Rather, any item of income, loss, or deduction flows through to their shareholders, partners, or members, who are then subject to tax.

The bill allows tax-option corporations and partnerships, including limited liability companies and other entities that are treated as partnerships under federal tax law, to elect to be taxed at the entity level for purposes of the income and franchise taxes. An entity that makes the election is taxed at a rate of 7.9 percent on its net income that is reportable to Wisconsin, and the situs of income is determined as if the election was not made. The entity may not claim losses and tax credits except for the credit for taxes paid to other states. The bill also provides that the adjusted basis of the entity's partners, shareholders, or members is determined as if the election was not made. If the entity fails to pay the taxes due, the Department of Revenue may collect the amount from the entity's partners, shareholders, or members. Persons who hold more than 50 percent ownership of the pass-through

entity must consent to the election and must consent to any revocation of the election. The bill allows the election to be made for taxable years beginning in 2018 for tax-option corporations and 2019 for other entities.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 71.05 (6) (a) 14. of the statutes is amended to read:

2           71.05 (6) (a) 14. Any amount received as a proportionate share of the earnings  
3           and profits of a corporation that is an S corporation for federal income tax purposes  
4           if those earnings and profits accumulated during a year for which the shareholders  
5           have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent  
6           not included in federal adjusted gross income for the current year. This subdivision  
7           does not apply to earnings and profits accumulated during a year for which a  
8           tax-option corporation has made an election under s. 71.365 (4m) (a) to be taxed at  
9           the entity level.

10           **SECTION 2.** 71.05 (10) (dm) of the statutes is created to read:

11           71.05 (10) (dm) Any item of income, loss, or deduction passed through from an  
12           entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a) to pay tax  
13           at the entity level.

be taxed

14           **SECTION 3.** 71.07 (7) (b) of the statutes, as affected by 2017 Wisconsin Act 59,  
15           is renumbered 71.07 (7) (b) 1. and amended to read:

16           71.07 (7) (b) 1. Subject to conditions and limitations in pars. (c) and (d), if a  
17           resident individual, estate or trust pays a net income tax to another state, that  
18           resident individual, estate or trust may credit the net tax paid to that other state on  
19           that income against the net income tax otherwise payable to ~~the~~ this state on income

1 of the same year. The credit may not be allowed unless the income taxed by the other  
2 state is also considered income for Wisconsin tax purposes. The credit may not be  
3 allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does  
4 not apply to those credits. For purposes of this paragraph subdivision, amounts  
5 declared and paid under the income tax law of another state are considered a net  
6 income tax paid to that other state only in the year in which the income tax return  
7 for that state was required to be filed.

8 2. Income and franchise taxes paid to another state by a tax-option corporation,  
9 partnership, or limited liability company that is treated as a partnership may be  
10 claimed as a credit under this paragraph by that corporation's shareholders, that  
11 partnership's partners, or that limited liability company's members who are  
12 residents of this state and who otherwise qualify under this paragraph, unless the  
13 tax-option corporation, partnership, or limited liability company has made an  
14 election under s. 71.21 (6) (a) or 71.365 (4m) (a).

15 **SECTION 4.** 71.07 (7) (b) 3. of the statutes is created to read:

16 71.07 (7) (b) 3. Subject to the conditions and limitations in pars. (c) and (d), if  
17 a tax-option corporation, partnership, or limited liability company makes an  
18 election under s. 71.21 (6) (a) or 71.365 (4m) (a), that tax-option corporation,  
19 partnership, or limited liability company may credit the net income or franchise tax  
20 paid by the entity to another state on that income and the net income tax on that  
21 income paid by the entity on behalf of its shareholders, partners, and members that  
22 are residents of this state on a composite return filed with the other state against the  
23 net income or franchise tax otherwise payable to this state on income of the same  
24 year. The credit may not be allowed unless the income taxed by the other state is also  
25 considered income for Wisconsin tax purposes and is otherwise attributable to

1 amounts that would be reportable to this state by shareholders, partners, or  
2 members of the tax-option corporation, partnership, or limited liability company  
3 that are residents of this state if the election under s. 71.21 (6) (a) or 71.365 (4m) (a)  
4 was not made. The credit may not be allowed unless claimed within the time  
5 provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes  
6 of this subdivision, amounts declared and paid under the income tax law of another  
7 state are considered a net income tax paid to that other state only in the year in which  
8 the income tax return for that state was required to be filed.

9 **SECTION 5.** 71.07 (7) (c) of the statutes, as created by 2017 Wisconsin Act 59,  
10 is amended to read:

11 71.07 (7) (c) The credit total credits under par. (b) 1. and 2. may not exceed an  
12 amount determined by multiplying the taxpayer's net Wisconsin income tax by a  
13 ratio derived by dividing the income subject to tax in the other state that is also  
14 subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the  
15 taxpayer's Wisconsin adjusted gross income. The credit under par. (b) 3. may not  
16 exceed an amount determined by multiplying the income subject to tax in the other  
17 state that is also subject to tax in Wisconsin by 7.9 percent.

18 **SECTION 6.** 71.21 (6) of the statutes is created to read:

19 71.21 (6) (a) If persons who, on the day on which an election under this  
20 paragraph is made, hold more than 50 percent of the capital and profits of a  
21 partnership consent, a partnership that is a partnership for federal income tax  
22 purposes may elect, on or before the due date or extended due date of its return under  
23 this chapter, to be taxed at the entity level at a rate of 7.9 percent of net income  
24 reportable to this state as described in par. (d) 1. for that taxable year.



1 (b) It is the intent of the election under par. (a) that partners of a partnership  
2 may not include in their Wisconsin adjusted gross income their proportionate share  
3 of all items of income, gain, loss, or deduction of the partnership. It is also the intent  
4 that the partnership shall pay tax on items that would otherwise be taxed if this  
5 election was not made.

6 (c) If persons who, on the day on which the election under this paragraph is  
7 made, hold more than 50 percent of the capital and profits of a partnership that has  
8 elected to be taxed at the entity level under par. (a) consent, a partnership that is a  
9 partnership for federal income tax purposes may elect, on or before the due date or  
10 extended due date of its return under this chapter, to revoke for that taxable year its  
11 election under par. (a).

12 (d) If an election is made under par. (a), all of the following apply:

13 1. The net income of the partnership is computed under subs. (1) to (5) and the  
14 situs of income shall be determined as if the election under par. (a) was not made.

15 2. The partnership may not claim the loss under s. 71.05 (8).

16 3. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter  
17 may not be claimed by the partnership.

18 4. A partner's adjusted basis of the partner's interest in the partnership is  
19 determined as if the election under par. (a) was not made.

20 5. The provisions of ss. 71.09 and 71.84 relating to estimated payments and  
21 underpayment interest shall apply to the partnership.

22 6. If the partnership fails to pay the amount owed to the department with  
23 respect to income as a result of the election under par. (a), the department may collect  
24 the amount from the partners based on their proportionate share of such income.

25 (e) The department may promulgate rules to implement this subsection.

1           **SECTION 7.** 71.36 (1) of the statutes is amended to read:

2           71.36 (1) It is the intent of this section that shareholders of tax-option  
3 corporations include in their Wisconsin adjusted gross income their proportionate  
4 share of the corporation's tax-option items unless the corporation elects under s.  
5 71.365 (4) (a) not to be a tax-option corporation or elects under s. 71.365 (4m) (a) to  
6 be taxed at the entity level.

7           **SECTION 8.** 71.365 (1) of the statutes is renumbered 71.365 (1) (a) and amended  
8 to read:

9           71.365 (1) (a) For purposes of this chapter, the adjusted basis of a shareholder  
10 in the stock and indebtedness of a tax-option corporation shall be determined in the  
11 manner prescribed by the internal revenue code for a shareholder of an S  
12 corporation, except that the nature and amount of items affecting that basis shall be  
13 determined under this chapter. This subsection paragraph does not apply to 1978  
14 and earlier taxable years of corporations which were S corporations for federal  
15 income tax purposes or to taxable years of corporations for which an election has been  
16 made under sub. (4) (a).

17           **SECTION 9.** 71.365 (1) (b) of the statutes is created to read:

18           71.365 (1) (b) The adjusted basis of a shareholder in the stock and indebtedness  
19 of a tax-option corporation that has made an election under sub. (4m) (a) is  
20 determined as if the election was not made.

21           **SECTION 10.** 71.365 (4m) of the statutes is created to read:

22           71.365 (4m) TAX-OPTION CORPORATION ELECTION TO PAY FRANCHISE OR INCOME TAX  
23 AT THE ENTITY LEVEL. (a) If persons who hold more than 50 percent of the shares on  
24 the day on which an election under this paragraph is made consent, a corporation  
25 that is an S corporation for federal income tax purposes may elect, on or before the

1 due date or extended due date of its return under this chapter, to ~~pay tax~~ <sup>be taxed</sup> at the entity  
2 level at a rate of 7.9 percent of net income reportable to this state as described in par.

3 (d) 1. for that taxable year.

4 (b) It is the intent of the election under par. (a) that shareholders of a tax-option  
5 corporation may not include in their Wisconsin adjusted gross income their  
6 proportionate share of all items of income, gain, loss, or deduction of the tax-option  
7 corporation. It is also the intent that the tax-option corporation shall pay tax on  
8 items that would otherwise be taxed if this election was not made.

9 (c) If persons who, on the day on which the election under this paragraph is  
10 made, hold more than 50 percent of the shares of a corporation that has elected to  
11 be taxed at the entity level under par. (a) consent, a corporation that is an S  
12 corporation for federal income tax purposes may elect, on or before the due date or  
13 extended due date of its return under this chapter, to revoke for that taxable year its  
14 election under par. (a).

15 (d) If an election is made under par. (a), all of the following apply:

16 1. The net income of the tax-option corporation is computed under s. 71.34 (1k)  
17 and the situs of income shall be determined as if the election was not made.

18 2. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter  
19 may not be claimed by the tax-option corporation.

20 3. The tax-option corporation may not claim losses under ss. 71.05 (8) and  
21 71.26 (4).

22 4. The provisions of ss. 71.29 and 71.84 relating to estimated payments and  
23 underpayment interest shall apply to the tax-option corporation for the taxable year  
24 beginning in 2019 and later years.

5. If the tax-option corporation fails to pay the amount owed to the department with respect to income as a result of the election under par. (a), the department may collect such amount from the shareholders based on their proportionate share of such income.

(e) The department may promulgate rules to implement this subsection.

**SECTION 11.** 71.775 (3) (a) 4. of the statutes is created to read:

71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or 71.365 (4m) (a) to be taxed at the entity level.

**SECTION 12. Initial applicability.**

(1) This act first applies to taxable years beginning on January 1, 2019, except that this act first applies to taxable years beginning on January 1, 2018, for tax-option corporations.

(END)



LRB-5985/P5

Vince 11/29

p2 line 12 } change pay tax to  
p7 line 1 } be taxed

## Lunder, Erika

---

**From:** Williams, Vincent  
**Sent:** Tuesday, November 27, 2018 8:50 AM  
**To:** Lunder, Erika  
**Subject:** RE: LRB-5985/P1 Language

Yes, please make the first change below.

---

**From:** Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>  
**Sent:** Tuesday, November 27, 2018 8:40 AM  
**To:** Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>  
**Subject:** RE: LRB-5985/P1 Language

Great—sounds good. Do you want me to make the first change below?

---

**From:** Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>  
**Sent:** Tuesday, November 27, 2018 8:38 AM  
**To:** Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>  
**Subject:** RE: LRB-5985/P1 Language

I can send it to him.

---

**From:** Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>  
**Sent:** Tuesday, November 27, 2018 8:36 AM  
**To:** Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>  
**Subject:** FW: LRB-5985/P1 Language

Hi Vince,

Do you want me to send him the P3 language, which already incorporated the second change?

Do you want me to make the change in number 1?

Thanks,  
Erika

---

**From:** Thomas J. Nichols <tjn@mtfn.com>  
**Sent:** Tuesday, November 27, 2018 7:56 AM  
**To:** Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>  
**Cc:** Marklein, Howard <Howard.Marklein@legis.wisconsin.gov>; Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>; Prange, Katy <Katy.Prange@legis.wisconsin.gov>; russell.wolff@bakertilly.com; James W. DeCleene <jwd@mtfn.com>  
**Subject:** LRB-5985/P1 Language

Erika, in going over the LRB-5985/P1 language, it looks like there are two cleanup items that still need to be taken care of with respect to this draft:

1. A clarifying change should be made to section 71.36(1) of the statutes, and attached is language to accomplish this. I think you will see that this is pretty straightforward and necessary.
2. Also, as we discussed last week, the language below for section 71.365(1) still needs to be tweaked to make it clear that that section still does apply to corporations making the new 71.365(4m) election (even though that section will not apply to corporations making the 71.365(4)(a) election).

I am not sure of the timing on all of this, but I understand from Sen. Marklein that it is very tight. Could you send me a copy of whatever changes you are able to make as soon as they are available? If you would like to talk through any of this, please do not hesitate to give me a call. As always, I am available through the office phone noted below (extension 1380 after hours) or on my cell (414-617-6355).

**Thomas J. Nichols** | Attorney at Law

**MEISSNER TIERNEY**

111 EAST KILBOURN AVENUE, 19th FLOOR  
MILWAUKEE, WI 53202  
P 414.273.1300 x1380 | F 414.273.5840  
[website](#) | [bio](#) | [vCard](#) | [LinkedIn](#) | [map](#) | [email](#)

---

**From:** Lunder, Erika <[Erika.Lunder@legis.wisconsin.gov](mailto:Erika.Lunder@legis.wisconsin.gov)>  
**Sent:** Tuesday, November 20, 2018 8:32 AM  
**To:** Thomas J. Nichols <[tjn@mtfn.com](mailto:tjn@mtfn.com)>  
**Subject:** RE: S-Corporation to elect out of passthrough status for Wisconsin tax purposes only

Hello,

Thanks for getting back to me last night. Would the below language work? I ran it by Vince and we wanted to double check with you.

**71.365 (1) ADJUSTED BASIS OF SHAREHOLDERS' STOCK IN TAX-OPTION CORPORATION.**

For purposes of this chapter, the adjusted basis of a shareholder in the stock and indebtedness of a tax-option corporation shall be determined in the manner prescribed by the internal revenue code for a shareholder of an S corporation, except that the nature and amount of items affecting that basis shall be determined under this chapter. ~~This~~ Except for tax-option corporations for which an election has been made under sub. (4m) (a), this subsection does not apply to 1978 and earlier taxable years of corporations which were S corporations for federal income tax purposes or to taxable years of corporations for which an election has been made under sub. (4) (a).

Thanks!  
Erika

P.S. You looked so familiar to me yesterday, and I realized later it is because of your work with the S Corporation Association and testimony before Congress. When I was at CRS, my colleagues and I found your writings and testimony to be very helpful when presenting legislative policy options on S corps to Members and their staff.

---

**From:** Thomas J. Nichols <[tjn@mtfn.com](mailto:tjn@mtfn.com)>  
**Sent:** Tuesday, November 13, 2018 4:38 PM  
**To:** Williams, Vincent <[Vincent.Williams@legis.wisconsin.gov](mailto:Vincent.Williams@legis.wisconsin.gov)>; Kreye, Joseph <[Joseph.Kreye@legis.wisconsin.gov](mailto:Joseph.Kreye@legis.wisconsin.gov)>; Lunder, Erika <[Erika.Lunder@legis.wisconsin.gov](mailto:Erika.Lunder@legis.wisconsin.gov)>; Russell Wolff <[Russell.Wolff@bakertilly.com](mailto:Russell.Wolff@bakertilly.com)>  
**Cc:** Sen.Marklein <[Sen.Marklein@legis.wisconsin.gov](mailto:Sen.Marklein@legis.wisconsin.gov)>; Rep.Kooyenga <[Rep.Kooyenga@legis.wisconsin.gov](mailto:Rep.Kooyenga@legis.wisconsin.gov)>; Lonergan,

Sandy <[Sandy.Lonergan@legis.wisconsin.gov](mailto:Sandy.Lonergan@legis.wisconsin.gov)>

**Subject:** RE: S-Corporation to elect out of passthrough status for Wisconsin tax purposes only

All, attached is proposed draft statutory language. As you will see, I tried to build upon language already contained in the statutes as much as possible. I realize that you will all want to take a careful look at this, but hopefully this will be a good start.

**Thomas J. Nichols** | Attorney at Law

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ATTORNEYS AT LAW

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**From:** Williams, Vincent <[Vincent.Williams@legis.wisconsin.gov](mailto:Vincent.Williams@legis.wisconsin.gov)>

**Sent:** Tuesday, November 13, 2018 9:21 AM

**To:** Thomas J. Nichols <[tin@mtfn.com](mailto:tin@mtfn.com)>; Kreye, Joseph <[Joseph.Kreye@legis.wisconsin.gov](mailto:Joseph.Kreye@legis.wisconsin.gov)>; Lunder, Erika <[Erika.Lunder@legis.wisconsin.gov](mailto:Erika.Lunder@legis.wisconsin.gov)>

**Cc:** Sen. Marklein <[Sen.Marklein@legis.wisconsin.gov](mailto:Sen.Marklein@legis.wisconsin.gov)>; Rep. Kooyenga <[Rep.Kooyenga@legis.wisconsin.gov](mailto:Rep.Kooyenga@legis.wisconsin.gov)>; Lonergan, Sandy <[Sandy.Lonergan@legis.wisconsin.gov](mailto:Sandy.Lonergan@legis.wisconsin.gov)>

**Subject:** S-Corporation to elect out of passthrough status for Wisconsin tax purposes only

Hi Tom,

This is a follow-up to Sen. Marklein's phone call.

Included on this email is Joseph Kreye and Erika Lunder from the Legislative Reference Bureau. They are the drafting attorneys responsible for this subject matter.

Sen. Marklein has given the drafting attorneys permission to discuss this draft with you.

You may connect with the drafting attorneys directly to work on the language for this change.

Regards,

Vince Williams

Legislative Aide & Committee Clerk

Office of State Senator Howard Marklein

17<sup>th</sup> Senate District

PO Box 7882

Madison, WI 53707-7882

[www.legis.wisconsin.gov](http://www.legis.wisconsin.gov)

(608) 266-0703 or (800) 978-8008.





LRB-5985 (17-18)

Vince (Sen. Marklein)

11/30

turn into 11

make companion for Rep. Kooyenga

## **Barman, Mike**

---

**From:** Lunder, Erika  
**Sent:** Friday, November 30, 2018 11:45 AM  
**To:** Barman, Mike  
**Subject:** RE: request for fiscal analysis

Yes, please. Thank you so much!

**From:** Barman, Mike <Mike.Barman@legis.wisconsin.gov>  
**Sent:** Friday, November 30, 2018 11:45 AM  
**To:** Lunder, Erika <Erika.Lunder@legis.wisconsin.gov>  
**Subject:** RE: request for fiscal analysis

Yes ... unless "/1" gets introduced then we would automatically submit it.

Do you want me to submit the "/1" to DOA for assignment now?

*Mike Barman* (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office  
1 East Main Street, Suite 200, Madison, WI 53703  
(608) 504-5801 / [mike.barman@legis.wisconsin.gov](mailto:mike.barman@legis.wisconsin.gov)

**From:** Lunder, Erika <[Erika.Lunder@legis.wisconsin.gov](mailto:Erika.Lunder@legis.wisconsin.gov)>  
**Sent:** Friday, November 30, 2018 11:42 AM  
**To:** Barman, Mike <Mike.Barman@legis.wisconsin.gov>  
**Subject:** request for fiscal analysis

Hi Mike,

Dan helped me earlier this week with making a fiscal request for LRB-5985, which was a /P3 at that point. The fiscal analysis was done for the /P3. The bill has gone through several revisions since then. Could you please tell me if a second request need to be made to get a fiscal analysis for the current version (/1)?

Thank you!  
Erika

**From:** Lunder, Erika  
**Sent:** Monday, November 26, 2018 11:53 AM  
**To:** Walker, Dan <[Dan.Walker@legis.wisconsin.gov](mailto:Dan.Walker@legis.wisconsin.gov)>  
**Subject:** RE: request for fiscal analysis

Thank you so much!

---

**From:** Walker, Dan <[Dan.Walker@legis.wisconsin.gov](mailto:Dan.Walker@legis.wisconsin.gov)>  
**Sent:** Monday, November 26, 2018 11:53 AM  
**To:** Lunder, Erika <[Erika.Lunder@legis.wisconsin.gov](mailto:Erika.Lunder@legis.wisconsin.gov)>  
**Subject:** RE: request for fiscal analysis

All taken care of. I followed Mike's updated instructions but if there are any problems, please let me know.

I will update the drafting file to show that the request has been submitted.

Thanks,

Dan

---

**From:** Lunder, Erika <[Erika.Lunder@legis.wisconsin.gov](mailto:Erika.Lunder@legis.wisconsin.gov)>  
**Sent:** Monday, November 26, 2018 11:40 AM  
**To:** Walker, Dan <[Dan.Walker@legis.wisconsin.gov](mailto:Dan.Walker@legis.wisconsin.gov)>  
**Subject:** RE: request for fiscal analysis

Thank you! The P3 is still in editing.

Thank you for all your help!  
Erika

---

**From:** Walker, Dan <[Dan.Walker@legis.wisconsin.gov](mailto:Dan.Walker@legis.wisconsin.gov)>  
**Sent:** Monday, November 26, 2018 11:38 AM  
**To:** Lunder, Erika <[Erika.Lunder@legis.wisconsin.gov](mailto:Erika.Lunder@legis.wisconsin.gov)>  
**Subject:** RE: request for fiscal analysis

I can do it I believe. I am a bit out of practice but I will let you know if I run into any problems.

Dan

---

**From:** Lunder, Erika <[Erika.Lunder@legis.wisconsin.gov](mailto:Erika.Lunder@legis.wisconsin.gov)>  
**Sent:** Monday, November 26, 2018 11:36 AM  
**To:** Walker, Dan <[Dan.Walker@legis.wisconsin.gov](mailto:Dan.Walker@legis.wisconsin.gov)>  
**Subject:** request for fiscal analysis

Hi Dan,

I've always asked Mike about this, but I see he is out. Could you please tell me who I should ask to request a fiscal analysis of LRB-5985/P3? The request needs to be made ASAP.

Kira is finishing up the P3 now.

Thank you!  
Erika



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5985/1

EKL:all

2017 BILL

1     **AN ACT** *to renumber and amend* 71.07 (7) (b) and 71.365 (1); *to amend* 71.05  
2           (6) (a) 14., 71.07 (7) (c) and 71.36 (1); and *to create* 71.05 (10) (dm), 71.07 (7)  
3           (b) 3., 71.21 (6), 71.365 (1) (b), 71.365 (4m) and 71.775 (3) (a) 4. of the statutes;  
4           **relating to:** election of pass-through entities to be taxed at the entity level.

---

***Analysis by the Legislative Reference Bureau***

This bill allows pass-through entities to elect to be taxed at the entity level for purposes of the state's income and franchise taxes.

Under current law, pass-through entities, such as tax-option corporations and partnerships, are generally not subject to the income or franchise tax at the entity level. Rather, any item of income, loss, or deduction flows through to their shareholders, partners, or members, who are then subject to tax.

The bill allows tax-option corporations and partnerships, including limited liability companies and other entities that are treated as partnerships under federal tax law, to elect to be taxed at the entity level for purposes of the income and franchise taxes. An entity that makes the election is taxed at a rate of 7.9 percent on its net income that is reportable to Wisconsin, and the situs of income is determined as if the election was not made. The entity may not claim losses and tax credits except for the credit for taxes paid to other states. The bill also provides that the adjusted basis of the entity's partners, shareholders, or members is determined as if the election was not made. If the entity fails to pay the taxes due, the Department of Revenue may collect the amount from the entity's partners, shareholders, or members. Persons who hold more than 50 percent ownership of the pass-through

**BILL**

entity must consent to the election and must consent to any revocation of the election. The bill allows the election to be made for taxable years beginning in 2018 for tax-option corporations and 2019 for other entities.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1       **SECTION 1.** 71.05 (6) (a) 14. of the statutes is amended to read:

2           71.05 (6) (a) 14. Any amount received as a proportionate share of the earnings  
3       and profits of a corporation that is an S corporation for federal income tax purposes  
4       if those earnings and profits accumulated during a year for which the shareholders  
5       have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent  
6       not included in federal adjusted gross income for the current year. This subdivision  
7       does not apply to earnings and profits accumulated during a year for which a  
8       tax-option corporation has made an election under s. 71.365 (4m) (a) to be taxed at  
9       the entity level.

10       **SECTION 2.** 71.05 (10) (dm) of the statutes is created to read:

11           71.05 (10) (dm) Any item of income, loss, or deduction passed through from an  
12       entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a) to be taxed  
13       at the entity level.

14       **SECTION 3.** 71.07 (7) (b) of the statutes, as affected by 2017 Wisconsin Act 59,  
15       is renumbered 71.07 (7) (b) 1. and amended to read:

16           71.07 (7) (b) 1. Subject to conditions and limitations in pars. (c) and (d), if a  
17       resident individual, estate or trust pays a net income tax to another state, that  
18       resident individual, estate or trust may credit the net tax paid to that other state on  
19       that income against the net income tax otherwise payable to the this state on income

**BILL**

1 of the same year. The credit may not be allowed unless the income taxed by the other  
2 state is also considered income for Wisconsin tax purposes. The credit may not be  
3 allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does  
4 not apply to those credits. For purposes of this paragraph subdivision, amounts  
5 declared and paid under the income tax law of another state are considered a net  
6 income tax paid to that other state only in the year in which the income tax return  
7 for that state was required to be filed.

8       2. Income and franchise taxes paid to another state by a tax-option corporation,  
9 partnership, or limited liability company that is treated as a partnership may be  
10 claimed as a credit under this paragraph by that corporation's shareholders, that  
11 partnership's partners, or that limited liability company's members who are  
12 residents of this state and who otherwise qualify under this paragraph, unless the  
13 tax-option corporation, partnership, or limited liability company has made an  
14 election under s. 71.21 (6) (a) or 71.365 (4m) (a).

15       **SECTION 4.** 71.07 (7) (b) 3. of the statutes is created to read:

16       **71.07 (7) (b) 3.** Subject to the conditions and limitations in pars. (c) and (d), if  
17 a tax-option corporation, partnership, or limited liability company makes an  
18 election under s. 71.21 (6) (a) or 71.365 (4m) (a), that tax-option corporation,  
19 partnership, or limited liability company may credit the net income or franchise tax  
20 paid by the entity to another state on that income and the net income tax on that  
21 income paid by the entity on behalf of its shareholders, partners, and members that  
22 are residents of this state on a composite return filed with the other state against the  
23 net income or franchise tax otherwise payable to this state on income of the same  
24 year. The credit may not be allowed unless the income taxed by the other state is also  
25 considered income for Wisconsin tax purposes and is otherwise attributable to

**BILL****SECTION 4**

1 amounts that would be reportable to this state by shareholders, partners, or  
2 members of the tax-option corporation, partnership, or limited liability company  
3 that are residents of this state if the election under s. 71.21 (6) (a) or 71.365 (4m) (a)  
4 was not made. The credit may not be allowed unless claimed within the time  
5 provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes  
6 of this subdivision, amounts declared and paid under the income tax law of another  
7 state are considered a net income tax paid to that other state only in the year in which  
8 the income tax return for that state was required to be filed.

9 **SECTION 5.** 71.07 (7) (c) of the statutes, as created by 2017 Wisconsin Act 59,  
10 is amended to read:

11 71.07 (7) (c) The credit total credits under par. (b) 1. and 2. may not exceed an  
12 amount determined by multiplying the taxpayer's net Wisconsin income tax by a  
13 ratio derived by dividing the income subject to tax in the other state that is also  
14 subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the  
15 taxpayer's Wisconsin adjusted gross income. The credit under par. (b) 3. may not  
16 exceed an amount determined by multiplying the income subject to tax in the other  
17 state that is also subject to tax in Wisconsin by 7.9 percent.

18 **SECTION 6.** 71.21 (6) of the statutes is created to read:

19 71.21 (6) (a) If persons who, on the day on which an election under this  
20 paragraph is made, hold more than 50 percent of the capital and profits of a  
21 partnership consent, a partnership that is a partnership for federal income tax  
22 purposes may elect, on or before the due date or extended due date of its return under  
23 this chapter, to be taxed at the entity level at a rate of 7.9 percent of net income  
24 reportable to this state as described in par. (d) 1. for that taxable year.

**BILL**

1 (b) It is the intent of the election under par. (a) that partners of a partnership  
2 may not include in their Wisconsin adjusted gross income their proportionate share  
3 of all items of income, gain, loss, or deduction of the partnership. It is also the intent  
4 that the partnership shall pay tax on items that would otherwise be taxed if this  
5 election was not made.

6 (c) If persons who, on the day on which the election under this paragraph is  
7 made, hold more than 50 percent of the capital and profits of a partnership that has  
8 elected to be taxed at the entity level under par. (a) consent, a partnership that is a  
9 partnership for federal income tax purposes may elect, on or before the due date or  
10 extended due date of its return under this chapter, to revoke for that taxable year its  
11 election under par. (a).

12 (d) If an election is made under par. (a), all of the following apply:

13 1. The net income of the partnership is computed under subs. (1) to (5) and the  
14 situs of income shall be determined as if the election under par. (a) was not made.

15 2. The partnership may not claim the loss under s. 71.05 (8).

16 3. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter  
17 may not be claimed by the partnership.

18 4. A partner's adjusted basis of the partner's interest in the partnership is  
19 determined as if the election under par. (a) was not made.

20 5. The provisions of ss. 71.09 and 71.84 relating to estimated payments and  
21 underpayment interest shall apply to the partnership.

22 6. If the partnership fails to pay the amount owed to the department with  
23 respect to income as a result of the election under par. (a), the department may collect  
24 the amount from the partners based on their proportionate share of such income.

25 (e) The department may promulgate rules to implement this subsection.



**BILL****SECTION 7**

1       **SECTION 7.** 71.36 (1) of the statutes is amended to read:

2       71.36 (1) It is the intent of this section that shareholders of tax-option  
3 corporations include in their Wisconsin adjusted gross income their proportionate  
4 share of the corporation's tax-option items unless the corporation elects under s.  
5 71.365 (4) (a) not to be a tax-option corporation or elects under s. 71.365 (4m) (a) to  
6 be taxed at the entity level.

7       **SECTION 8.** 71.365 (1) of the statutes is renumbered 71.365 (1) (a) and amended  
8 to read:

9       71.365 (1) (a) For purposes of this chapter, the adjusted basis of a shareholder  
10 in the stock and indebtedness of a tax-option corporation shall be determined in the  
11 manner prescribed by the internal revenue code for a shareholder of an S  
12 corporation, except that the nature and amount of items affecting that basis shall be  
13 determined under this chapter. This ~~subsection~~ paragraph does not apply to 1978  
14 and earlier taxable years of corporations which were S corporations for federal  
15 income tax purposes or to taxable years of corporations for which an election has been  
16 made under sub. (4) (a).

17       **SECTION 9.** 71.365 (1) (b) of the statutes is created to read:

18       71.365 (1) (b) The adjusted basis of a shareholder in the stock and indebtedness  
19 of a tax-option corporation that has made an election under sub. (4m) (a) is  
20 determined as if the election was not made.

21       **SECTION 10.** 71.365 (4m) of the statutes is created to read:

22       71.365 (4m) TAX-OPTION CORPORATION ELECTION TO PAY FRANCHISE OR INCOME TAX  
23 AT THE ENTITY LEVEL. (a) If persons who hold more than 50 percent of the shares on  
24 the day on which an election under this paragraph is made consent, a corporation  
25 that is an S corporation for federal income tax purposes may elect, on or before the

**BILL****SECTION 10**

1 due date or extended due date of its return under this chapter, to be taxed at the  
2 entity level at a rate of 7.9 percent of net income reportable to this state as described  
3 in par. (d) 1. for that taxable year.

4 (b) It is the intent of the election under par. (a) that shareholders of a tax-option  
5 corporation may not include in their Wisconsin adjusted gross income their  
6 proportionate share of all items of income, gain, loss, or deduction of the tax-option  
7 corporation. It is also the intent that the tax-option corporation shall pay tax on  
8 items that would otherwise be taxed if this election was not made.

9 (c) If persons who, on the day on which the election under this paragraph is  
10 made, hold more than 50 percent of the shares of a corporation that has elected to  
11 be taxed at the entity level under par. (a) consent, a corporation that is an S  
12 corporation for federal income tax purposes may elect, on or before the due date or  
13 extended due date of its return under this chapter, to revoke for that taxable year its  
14 election under par. (a).

15 (d) If an election is made under par. (a), all of the following apply:

16 1. The net income of the tax-option corporation is computed under s. 71.34 (1k)  
17 and the situs of income shall be determined as if the election was not made.

18 2. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter  
19 may not be claimed by the tax-option corporation.

20 3. The tax-option corporation may not claim losses under ss. 71.05 (8) and  
21 71.26 (4).

22 4. The provisions of ss. 71.29 and 71.84 relating to estimated payments and  
23 underpayment interest shall apply to the tax-option corporation for the taxable year  
24 beginning in 2019 and later years.

# BILL

## SECTION 10

5. If the tax-option corporation fails to pay the amount owed to the department with respect to income as a result of the election under par. (a), the department may collect such amount from the shareholders based on their proportionate share of such income.

(e) The department may promulgate rules to implement this subsection.

**SECTION 11.** 71.775 (3) (a) 4. of the statutes is created to read:

71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or 71.365 (4m) (a) to be taxed at the entity level.

## SECTION 12. Initial applicability.

(1) This act first applies to taxable years beginning on January 1, 2019, except that this act first applies to taxable years beginning on January 1, 2018, for tax-option corporations.

(END)